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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,174	02/04/2002	Ronny L. Knak	32204	4911

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EXAMINER

HARTMANN, GARY S

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/067,174

Applicant(s)

KNAK ET AL.

Examiner

Gary Hartmann

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 21-25 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly submitted claims require at least two upwardly oriented ledges, which presents a structure which is patentably distinct from the originally elected invention.
2. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-25 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 6-8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Maguire (U.S. Patent 3,881,832). Maguire discloses a drainage system grate assembly including a frame (4) set within a watercourse (gutter) and a grate (10) seated within the frame (Figure 1). The grate includes at least one tread bar (11, 12, 13, 14) and at least one cross bar (15, 16) spanning the frame and supporting the tread bar. There is a flange (23) protruding from the crossbar and a locking element (6) operable to be secured to the flange and contact the frame in order to secure the grate within the frame (Figure 1).

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The frame has ledges (5) for supporting the crossbars.

The locking element (6) meets the recitation of shelves.

There is a slanted side (24, for example) adjacent the flange.

The flange is substantially horizontal (Figure 2, for example).

The slanted side (24) is included on the crossbar and is adjacent a substantially vertical sidewall (22).

The locking element (6) is a flat bar.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 5, 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maguire, as applied above.

Regarding claims 4 and 5, Maguire does not teach the channel/slot; however, it is common to recess a protruding bar structure in order to either create a smoother top surface, or to obtain a more secure positioning of adjacent bars. For either of these reasons, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included this feature with the crossbar of Maguire.

Regarding claims 9, 10 and 12, Maguire does not teach an additional hole or nut retainer; however, using a bolt/nut retainer through a hole is a common configuration for securing adjacent structures. It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to have used this configuration with Maguire in order to, for example, prevent theft. Note that horizontal member of Maguire could receive a bolt and that the vertical member does engage the frame.

*Response to Arguments*

6. Applicant's arguments filed 11/7/2003 have been fully considered but they are not persuasive. The examiner substantially agrees with the differences between Maguire and the present application; note however that there is nothing in the claim limitations which describe the present invention sufficiently well to distinguish over the Maguire reference. Simply, all claim limitations have been met, as clearly shown in the above 102(b) rejection.

The arguments regarding claim 10 are moot, as the rejection has been changed in view of the amendment.

Regarding the arguments directed to claims 4 and 5, note that it is well known and well within ordinary skill in the art to use slots/channels in order to obtain an interlocking pattern which would, in this case, create a smoother surface. The tread bar could be welded, though this is not a positively recited limitation.

The examiner is aware of the requirement to establish a prima facie case of obviousness, and this has been done. Applicant has presented arguments to the functionality of the present invention; however, this functionality is not claimed in a manner which overcomes the rejections. In order to overcome rejections, applicant must positively recite structure which is neither present nor obvious to have incorporated into an existing structure. Applicant has not done this; therefore, the rejections stand.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

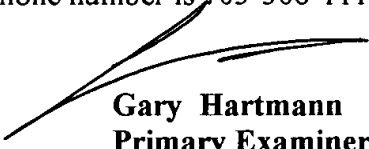
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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**Gary Hartmann  
Primary Examiner  
Art Unit 3671**